Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

78-513

RICHARD T. TRACY, SR.

Petitioner,

V.

WILLIAM P. DIXON, ET AL.

Respondents.

PETITIONER'S REPLY BRIEF

RICHARD T. TRACY, SR.
4272 Wedgewood Drive
Youngstown, Ohio 44511
Attorney and Petitioner Pro Se

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

78-513

RICHARD T. TRACY, SR.
Judge of the City Court,

Petitioner

V.

WILLIAM P. DIXON, ET AL,

Respondents

PETITIONER'S REPLY BRIEF

ARGUMENT

Through circumstances beyond Petitioner's control, the Petition for Writ of Certiorari apparently was not docketed until the morning after the ninetieth day following the denial of Motion for Rehearing. Such Petition was printed and mailed air-express mail prior to the expiration date. The delay was not foreseeable; therefore, an application for extension as authorized by 28USC 2101(C) was not believed necessary.

Petitioner had notified Respondents of

his intention to seek Certiorari on July 11, 1978, by serving them with a copy of the request for record as provided by Rule 21, Rules of the Supreme Court which serves a function similar to a Notice of Appeal. Respondents were advised that they were not free of Petitioner's demands. Further, there is pending in the 9th Circuit Court of Appeal and the Federal District Court of Arizona being Case No. 77-2034 and Case CIV 77-121PX respectively dealing with the same subject matter and somewhat the same parties in their individual capacity; therefore, finality is absent in this case. Denial of jurisdiction will only continue a multiplicity of suits, and provide incomplete relief to Petitioner as well as subject some Respondents to damage claims properly the responsibility of the Respondent herein the City of Phoenix.

In October, 1977, Petitioner had applied to this Court for a Writ to consolidate both State and Federal cases prior to Judgment. Such Petition in Case No. 77-348 was dismissed on October 17, 1977. In both cases, Petitioner requested this Court exercise its supervisionary powers under Rule 19, Rules of the Supreme Court since the improper acts complained of resulted from overt acts of these who also occupy judicial positions.

The language of 28 U.S.C. 2101(C) lacks the peremptory phrase that "no appeal shall be allowed," Matton & B Co. vs. Murphy (1943) 319 US 412, 87 L Ed2d 1483, 63 S Ct 1126. Instead power is granted this Court to act to avoid unfairness in extraordinary cases and this Court did in fact adopt in its rules provisions which recognize a postmark date prior to the expiration of the period provided by law. The peremptory legislative restriction is found in limiting the extension beyond sixty days of the prescribed period.

The delay was caused by the printer's failure to meet its commitment to provide the Brief by September 22nd for mailing thus requiring Petitioner to pay for overtime printing over the weekend and being unable to deliver it to the Clerk by the close of business on the 25th day of September, 1978.

CONCLUSION

This Court has jurisdiction and the Petition for Writ of Certiorari should be allowed.

Respectively submitted,

RICHARD T. TRACY, SR.
Petitioner Pro Se